

**74. UNFAIR PRACTICE REMEDIES**

**74.11: Nature or Purpose**

See **ULP #20-78**.

**74.12: Authority of Board of Personnel Appeals [See also 01.29.]**

The District Court (Eleventh Judicial District) in *School District No. 38 v. Board of Personnel Appeals and Bigfork Education Association*, “enforced a Board of Personnel Appeals order that judged the NLRB and the Board of Personnel Appeals to have equal remedial powers.” **ULP #42-81**

See also **ULPs #19-77, #20-78, #11-79, and #19-79, and DC #8-77**.

See **ULP #7-91**.

**74.14: Person Bound by Order**

See **ULP #19-79**.

**74.15: Individual Liability of Officers, Agents and Representatives [See also 09.12.]**

See **ULP #19-79**.

**74.16: Time Limitations of Order**

“This Board retains jurisdiction for the purpose of hearing this complaint as an unfair practice charge if: (1) the respondent does not ... file a written statement with this Board...; (2) an appropriate and timely motion adequately demonstrates that this dispute has not, with reasonable promptness after the issuance of this Order, been resolved in the grievance procedure or by arbitration; or (3) an appropriate and timely motion adequately demonstrates that the grievance or arbitration procedures were not conducted fairly.” **ULP #13-78**

**74.17: Considerations in Fashioning Remedies**

“In cases where the employer had interfered, restrained and coerced the employees in the exercise of their rights as set forth in Section 7 of the NLRA, the NLRB remedies all [appear] to strike a balance between the severity of the employer’s action and the purpose of the NLRA, Section 1, 29 USCA 151 .... The Collective Bargaining Act for Public Employees appears to have the same purpose Section **39-31-101 MCA** as the NLRB has.” **ULP #18-82**

See also **ULPs #19-77, #11-79, and #42-81.**

**74.18: Exhaustion of Remedies**

“As a general rule, the parties are encouraged and expected to exhaust their negotiated dispute resolution process prior to seeking relief elsewhere.” **ULP #19-88.**

**74.21: Other**

“The County is required to accept the collective bargaining agreement as executed by Teamsters ... No. 448 and Operating Engineers Local 400.... Caution must be exercised that if it is subsequently found that the County will suffer loss of funding or other penalty due to the size of the wage settlement in the offer, some issues may have to be renegotiated.” **ULP #10-79**

“Because the additional evidence was to relate to the due process claim, and because of our holding on that issue [that is, that *collateral estoppel* bars its relitigation], we conclude that this question is moot.” **ULP #38-80 Montana Supreme Court (1986).**

“The Supreme Court in *Forsyth v. Board*...did not address the heart of the *Forsyth* case which was whether failure to implement negotiated steps constituted an unfair labor practice. The Supreme Court ruled that because retroactive benefits were paid *Forsyth* was moot.” **ULP #29-86.**

“Conditions as they existed at the time of the hearing do not warrant any affirmative action to effectuate the policies of the Montana Collective Bargaining for Public Employees Act, Section **39-31-101 et seq., MCA.**” **ULP #24-87.**

“The charges as filed by the Association are moot and further litigation of resolved matters is contrary to public policy and the intent of the Collective Bargaining Act for Public Employees.” **ULP #32-88.**

“It was an Unfair Labor Practice for the defendants to seek to discipline the complainants with a fine for supporting the decertification effort. However, that matter was rendered moot when the American Federation of State, County and Municipal Employees internal procedures denied the defendants’ request for a fine.” **ULPs #62-89 and #64-89.**

**74.3: Types of Orders**

“Under Section **39-31-406(4)**, the Board may order a party to cease and desist from an unfair labor practice and may order affirmative action ‘as will effectuate the policies of this chapter.’ ...In dealing with similar statutory language, the Montana Supreme Court has recognized that if the Board determines the

employee is aggrieved, it has full discretion to resolve the employee's grievance. **Hutchin v. State of Montana Department of Fish, Wildlife and Parks ... (Mont. 1984)** interpreting **2-18-1012**. ... In the case of an unfair labor practice arising from a breach of the duty of fair representation, there is no standard remedy.... Essentially the union must make the employee whole.” **ULP #24-77 District Court (1985)**

“The National Labor Relations Board has ordered remedies such as none at all in Fisher ... to a cease and desist order in Yearbook ... to reinstatement in F.S. Willey ... to a bargaining order without a representation election in Gissel Packing Co....” **ULP #18-82**

See also **ULP #42-81**.

#### **74.31: Types of Orders – Cease and Desist**

See **ULPs #2-73, #3-73, #4-73, #5-73, #13-74, #1-75, #2-75, #5-75, #13-75, #16-75, #17-75, #4-75, #6-76, #11-76, #13-76, #14-76, #15-76, #16-76, #20-76, #21-76, #25-76, #37-76, #39-76, #41-76, #5-77, #6-77, #17-77, #19-77, #25-77, #11-78, #16-78, #17-78, #19-78, #20-78, #23-78, #34-78, #2-79, #3-79, #19-79, #29-79, #30-79, #31-79, #44-79, #7-80, #10-80, #19-80, #30-80, #34-80, #16-81, #33-81, #37-81, #42-81, #45-81, #2-82, #18-82, #29-82, #34-82, #18-83, #29-84, and #34-84.**

“It is ordered that Richland County High School District #1 and Elementary District #5, its Trustees, officers, agents and representatives shall: ...Cease and desist from refusing to deduct dues from the salaries of bargaining unit members who submit or who have already submitted signed Association authorization forms.” **ULP #29-84.**

“It is ordered that the City of Missoula cease and desist from refusing to abide by the terms of the February 19, 1987 grievance settlement and pay Jack McDonough 12 hours premium pay as agreed.” **ULP #6-86.**

“The Defendant shall immediately cease and desist from refusing to negotiate the transfer of state employees from the Statewide Classification and Pay Plan to the Blue Collar Classification and Pay Plan.” **ULP #10-86.**

“It is ordered that Missoula County School District No. 7 will cease and desist from interfering with individual teachers who engage channels outside the immediate employer-employee relationship in matters of improving conditions of employment.” **ULP #19-86.**

“It is ordered that the Defendant, Missoula County School District No. 7, cease not paying the increments provided for in a collective bargaining agreement upon expiration of that agreement.” **ULP #29-86.**

“Pursuant to Section **39-31-406(4)** the defendants, George Kurkowski, Mayor, Miles City — City Council, and all representatives thereof are hereby ordered to cease and desist from taking retaliatory actions against the complainants or any employee(s) who exercise(s) the rights guaranteed in Section **39-31-201 MCA** or who utilize(s) the processes of the Board of Personnel Appeals.” **ULP #24-87.**

“It is hereby recommended and this does order that the City of Billings cease and desist from refusing to abide by the terms of the collective bargaining agreement and process the grievance of James Adkins as per the contract....” **ULP #27-87.**

“It is hereby ordered that...the City of Hamilton, Police Department, its officers, agents, and representatives shall: ...cease and desist its violation of Section **39-31-401 MCA**; ...cease and desist from instituting any material changes in the terms and conditions of employment, that are compulsory subjects of collective bargaining, without giving the affected employees’ exclusive bargaining representative both reasonable notice and an opportunity to negotiate about the proposed change...” **ULP #34-87.**

“The Defendant, Custer County Unified School District shall cease and desist from any unfair labor practice as defined in **Section 39-31-401 (1) and (5) MCA**.... The Defendant...shall cease and desist from refusing to process the Arneson Grievance.” **ULP # 4-89.**

“The Defendant shall cease and desist from threatening any employee with loss of employment and/or benefits for engaging in union activities. The Defendant shall bargain in good faith with the Complainant over any item concerning the possible deconsolidation of the City/County Law Enforcement Agreement which relates to a mandatory subject of bargaining.... ” **ULP #13-90.**

See also **ULPs #19-85, #20-86, and #1-87.**

#### **74.32: Types of Orders – Restoration of Status Quo Ante**

“Not withdraw any previously awarded keypunch operators represented by MPEA.” **ULP #17-78**

“Rescind the establishment of the Total Patients Care concept as implemented during the 1978-80 contract and restore the work in contention back to the bargaining unit.” **ULP #29-79**

“Rescind its changed policy on the evaluation procedure.” **ULP #43-79**

“Remove from the personnel file of Ms. Knippel the memorandum dated May 9, 1980 which placed her on probation.” **ULP #19-80**

“To insure full protection of affected employee rights this Board ... must order the County to reinstitute the crash fire rescue program previously provided by the employees who were terminated and to reinstate those employees to their former or substantially equivalent positions with back pay computed from the date of discharge minus any wages earned elsewhere.” **ULP #30-80**

“Place Daisy Langton on the 8-year experience level of the negotiated salary schedule.... Place Beey McGarvey, when she returns from maternity leave, on the experience level consistent with 14 years of experience, BA + 1, of the negotiated salary schedule....” **ULP #34-80**

“Withdraw the administrative memorandum promulgated by Principal C.P. Garrett on April 24, 1981.... Remove any reports of ‘deviations’ which have been placed in teachers’ personnel files.... Destroy any reports of ‘deviations’ received by them.” **ULP #20-81**

“I will order the City to sign the collective bargaining agreement incorporating the tentative agreement changes of August 17<sup>th</sup>, and will order the City to pay all wages and fringe benefits required by the collective bargaining contract to the employees covered by the collective bargaining contract that are or have been employed by the City from July 1, 1981 to the date of the settlement of this charge.” **ULP #42-81**

The School District was ordered to “confer with counsel for the Association on amounts due the Association in accordance with this decision. If conference with Association’s counsel does not settle the matter of amounts due, inform this Board so that a remedial hearing, pursuant to the parties’ stipulation ... may be set.” **ULP #29-84**

See also **ULPs #13-75, #11-76, #16-76, #11-78, #20-78, #30-79, #29-82, and #34-82.**

“It is further ordered that Missoula County School District No. 7 recognize the step increments where applicable subsequent to the expiration of the collective bargaining agreement and compensate employees in accordance with this decision.” **ULP #29-86.**

“In developing remedies for specific situations there must be an attempt to create a restoration of the situation as nearly as possible, to that which would have obtained but for the unfair labor practice (*status quo ante*), **NLRB v Keystone Consolidated Industries**, 107 LRRM 3143, 653 F.2d 304, CA 7 (1981); **Southwest Forest Industries**, 121 LRRM 1158, 278 NLRB 31 (1986);

***St. John's General Hospital v NLRB*, 125 LRRM 3463, CA 3 (1987).” ULP #34-87.**

“The Defendant shall reinstate health insurance contributions to \$213.00 per month per employee and make whole each and every employee who may have suffered any loss from date of reductions of insurance benefits. The Defendant shall maintain the contribution rate of \$213.00 per month per employee until such time the rate may be changed through good faith bargaining with the Complainant.” **ULP #13-90.**

“The Laurel School District is directed to restore Ms. Sisk’s four tens until the matter is bargained in good faith with the Laurel Classified Employees Association.” **ULP #7-91.**

“The Defendant is not found responsible to reimburse Ms. Sisk for babysitting and travel expense. No authority is found to support the granting of this part of the charge. If child care and travel expenses are to be included as something new and part of the contract wage considerations, the matter should be addressed by the Parties at the bargaining table and not by this court.” **ULP #7-91.**

**74.33: Types of Orders – Reinstatement [See also 81.5087.]**

See **ULPs #16-75, #5-76, and #34-78 and *Hutchin v. Department of Fish, Wildlife & Parks* (1984).**

“[T]ake affirmative action by rescinding Resolution 487 and reinstate its previous policy of supplementing the Workers Compensation disability benefits of a police officer injured in the performance of duty....” **ULP #34-87.**

“It is recommended that Barbara Verbance and Betty Peterson be reinstated in the bargaining unit.” **ULP #54-89.**

**74.331: Types of Orders – Reinstatement – Entitlement**

See ***Welsh v. Great Falls* (1984).**

**74.335: Types of Orders – Reinstatement to Former or Substantially Equivalent Position**

See **ULPs #3-73, #4-73, #5-73, #15-76, #28-76, #39-76, #41-76, #17-77, #19-77, #11-78, #23-78, #3-79, #29-79, #10-80, #30-80, and #29-82 and *Hutchin v. Department of Fish, Wildlife & Parks* (1984) and ULP #3-79 Montana Supreme Court (1984).**

“[T]ake affirmative action by reinstating Mike Mahan as a Cottage Life Attendant at the Pine Hills School....” **ULP #1-87.**

**74.336: Types of Orders – Reinstatement without Prejudicing Privileges and Benefits**

See **ULPs #28-76, #39-76, #19-77, #29-79** and **ULP #3-79 Montana Supreme Court (1984).**

**74.34: Types of Orders – Restitution [See also 81.5087.]**

“The NLRB has ruled ... [that moving] expenses are a liability to the employer....” However, the Hearing Examiner could not grant Mr. Nau’s moving expenses because “Mr. Nau had an obligation to set forth his expenses at the unfair labor practice hearing on September 20, 1977 [which he did not do].... The right to cross examination and a clear statement of damages are at the heart of a fair hearing.” **ULP #19-77**

“Refund the representation service fees that have been withheld from the employees’ wages without the written authorization of the individual employees.” **ULP #44-79**

“[T]he parties in this matter had reached agreement on a collective bargaining agreement and the retroactive pay pursuant to that agreement. Because the retroactive pay, at issue in this matter, had been paid, no monetary relief is possible for a remedy.” **ULP #37-81**

“Following federal precedent, all of the parties agree that back pay is not always an appropriate remedy for an aggrieved employee.” **ULP #3-79 Montana Supreme Court (1984)**

See also **ULPs #4-73, #5-73, and #2-79** and **Hutchin v. Department of Fish, Wildlife & Parks (1984).**

“Confer with counsel for the Association on amounts due the Association in accordance with this decision.... If conference with Association’s counsel does not settle the matter of amounts due, inform this Board so that a remedial hearing, pursuant to the parties’ stipulation noted in finding of fact No. 22, may be set.” **ULP #29-84.**

See also **ULP #13-90.**

**74.341: Types of Orders – Restitution – Liability for Back Pay**

Should the Board make an award of back pay “on the basis that it would ‘effectuate the policies of this Act.’ ... Since there was no finding by the Hearing

Examiner that the unfair labor practice committed by the Defendant prolonged the negotiations, and there is no evidence in the record which would support such an assertion, we find Defendant's argument has merit. Therefore, this Board finds that our Order requiring an award of back pay is not warranted in this situation." **ULP #17-75**

The Hearing Examiner ordered "that those employees denied the meals by the discontinuance by reimbursed \$1 [the price the hospital charges for meals] for each day they would otherwise have received a free meal." **ULP #17-77**

"Rocky Top School District No., 87 ordered to make Charles Nau whole in regard to lost wages, lost benefits and interest in full compliance with this order." **ULP #19-77**

"[F]or the purpose of assessing damages, the NLRB deems it proper to resolve the grievance in favor of the discriminatee and not the wrongdoer." **ULP #24-77**

"Once the Board has established the amount of back pay owed an otherwise wrongfully discharged employee, the burden is upon the employer to produce evidence to mitigate its liability.... The City has not demonstrated how the available evidence can reasonable by interpreted as indicative of indifference, insincerity or slothfulness on Young's part in his search for employment." **ULP #3-79 Montana Supreme Court (1984).**

"The claim for back pay is based on Section 39-31-401(4) MCA. Here ... the State's insistence on the stipulation as a condition to fact finding did not constitute an unfair labor practice so this statute does not come into play... On the federal level, the NLRB has consistently held that those involved in an admitted unfair labor practice strike are *not* entitled to back pay." **ULP #11-79**

"Make those teachers whole who were not paid for the seventeen days after June 4, 1981 by paying them the amount they would have received had they been paid in accordance with the terms of the payment made to the twenty teachers who were paid for those seventeen days." **ULP #34-82**

See also **ULPs #3-73, #5-73, #15-76, #28-76, #3-79, #34-80, and #42-81 and Hutchin v. Department of Fish, Wildlife & Parks (1984) and Welsh v. Great Falls (1984).**

"[M]ake Mike Mahan whole by repaying him for all lost wages, including interest and all benefits which he would have received had he not been terminated on November 5, 1986...." **ULP #1-87.**

**74.342: Types of Orders – Restitution – Joint Liability for Back Pay**



[T]aking the rationale used by the federal courts to apportion damages in breach of duty of fair representation/contract cases, and taking the rationale used by the NLRB to apportion damages in duty of fair representation claims and other claims involving union and/or employer misconduct (including breach of the collective bargaining agreement by both the union and the employer), the basic principle is that when both the union and the employer have injured an employee, statutory policy requires that a transgressor should bear the burden of the consequences stemming from its illegal acts, and damages attributable solely to the employer's breach of contract should not be charged to the union but increases, if any, in those damages caused by the union's refusal to process the grievance should not be charged to the employer." **ULP #24-77**

"Both the union and the City are liable to McCarvel for damages during the period of time that it would have taken to process the McCarvel grievance through issuance of the arbitrator's decision (stipulated to as being 70 days). The Union alone however is responsible for McCarvel's damages after this point by failing to process McCarvel's grievance to be paid pursuant to the collective bargaining agreement." **ULP #24-77**

**74.343: Types of Orders – Restitution – Duty to Mitigate Damages**

"While composing the Proposed Order in the ... matter, I could not determine if Charles Nau, teacher, had mitigated his damages.... On March 23, 1978, I received Mr. Nau's affidavit ... [he had] sought employment.... I find that Mr. Nau has mitigated his damages and the affidavit is correct." **ULP #19-77**

"[U]nemployment compensation benefits are not to be used as an offset against back pay." **ULP #30-80**. See also **ULP #19-77**.

"There is substantial credible evidence to support the Board's decision that Mr. Young exercised reasonable diligence to obtain interim employment between October 31, 1978 and July 20, 1979, the time frame [over which] the remedy is to be fashioned." **ULP #3-79 District Court (1983)**. See also **ULP #3-79 Montana Supreme Court (1984)**.

See also **ULPs #28-76, #24-77, and #29-79**.

**74.344: Types of Orders – Restitution – Computation of Backpay**

"I will order back pay with interest and the restitution of lost benefits—insurance, teacher's retirement, social security--as stated ... [in] the Proposed Opinion.... All parties are also directed to exchange all needed information to effectively execute this order." **ULP #19-77**

"The U.S. Supreme Court in **NLRB vs. Seven-Up Bottling Co.(1953), 344 U.S. 344, 31 LRRM 2237**, upheld the Woolworth pay formula....(p.28): '...the loss of

pay be computed on the basis of each separate calendar quarter or portion thereof during the period from the Respondent's discriminatory action to the date of a proper offer of reinstatement....' I hereby adopt the above logic and formula in computing Velk's and Nau's back pay, benefits and expenses.... [The] calculation will end at the end of the school year...." **ULP #19-77**. See also **#29-79 and #30-80**.

"Because there is no contractually determined salary schedule ... use the following formula..." explained on page 30 of the March 10, 1978 Proposed Order. **ULP #19-77**

"Unemployment compensation income is not to be considered as income." However, such income has to be paid back to the unemployment office. **ULP #19-77**. See also **ULP #30-80**

"I grant any difference in any benefit [insurance, teacher retirement, social security] ... that Velk and ... Nau may have lost to be paid by the School District to the respective agency with interest." **ULP #19-77**

"In order to accommodate this order, the parties are directed to exchange and provide this Board a copy of all calculations ... within 30 days of the last day of school in the year that the School District offers Velk and Nau reemployment." **ULP #19-77**

"[T]he Bowen method of apportionment cannot be applied *identically* to the McCarvel situation because McCarvel involve a union's acquiescence in the breach of the collective bargaining agreement by the employer. That is in addition to the fact that McCarvel is an unfair labor practice before a Board and Bowen and Vaca involved court actions." **ULP #24-77**

"An employee who is entitled to overtime both contractually and statutorily cannot be given comp time instead. The library policy cannot supersede state law or a collective bargaining agreement." **ULP #24-77 District Court (1985)**

"In this case, it would be manifestly unjust to the grievant to limit back pay to the six months prior to filing the unfair labor practice with the board. To thus limit the award would in effect reward the Union for its procrastination in handling the grievance." **ULP #24-77 District Court (1985)**

"In accordance with Strachen Shipping Company and Groves Granite we agree with the Board's conclusion that damages began when McCarvel requested the Union handle his grievance in March of 1976 and continued until he resigned his city employment on June 30, 1978." **ULP #24-77 District Court (1985)**

"This award properly effectuates the statutory policy of making the grievant whole." **ULP #24-77 District Court (1985)**

“We also conclude the monetary damages awarded are within the statutory and case law precedents and that there was no abuse of Board discretion.” **ULP #24-77 District Court (1985)**

“Meet with representatives of the Union and attempt to determine the amount due [in making Bruce Young whole by repaying him for lost wages, benefits and interest incurred since October 31, 1978]...; if a mutual determination cannot be made within 10 days, notify the Board of Personnel Appeals’ hearing examiner who will hold a hearing and issue a detailed remedial order.” **ULP #3-79**

“The period for calculating back pay typically begins to run at the time of the illegal discharge and ends when the aggrieved employee’s reinstatement becomes effective.... However, this remedial period can be reduced if there is proof of mitigating circumstances. The burden of proof is on the employer to establish that it would not have had work available for an illegally discharged employee due to economic or other factors. **ULP #3-79 Montana Supreme Court (1984)**. See also **ULP #3-79 District Court (1983)**.

“In calculating the amount of back pay due an illegally discharged employee, the Board utilizes a method first developed and used by the **National Labor Relations Board in F.W. Woolworth Co.** .... This method, commonly referred to as the ‘Woolworth formula,’ has been approved by the United States Supreme Court. **NLRB v. Seven-Up Bottling Co.** ... Under this formula, the NLRB and the Board compute back pay ‘on the basis of each separate calendar quarter or portion thereof from the time of the illegal discharge to the time of a proper offer of reinstatement. The quarters begin with the first day of January, April, July and October.... We emphasize that this method has been approved by the United States Supreme Court as a proper exercise of informed discretion. **Seven-up Bottling Co.** ... The only caveat expressed by the Court was that the NLRB could not ‘apply a remedy it has worked out on the basis of its experience, without regard to circumstances which may make its application to a particular situation oppressive and therefore not calculated to effectuate a policy of the [National Labor Relations] Act.’” **ULP #3-79 Montana Supreme Court (1984)**. See also **ULP #3-79 District Court (1983)**

See also **ULPs #28-76 and #10-80**.

“In allowing damages prior to six months before the charge was filed, the District Court held it would be manifestly unfair to the grievant to limit the damages and would reward the union for its procrastination. We agree that this is a proper case to allow damages beyond the six month limit. . . . The District Court affirmed the Board’s award of damages from the time McCarvel began his employment until he left it. We find no abuse of discretion on the part of the District Court.” **ULP #24-77 Montana Supreme Court (1986)**.

“[M]eet with the union representatives of Floyd Tronstad and Harold Becker to determine the amount due.... If a mutual determination cannot be made within ten (10) days after this order becomes final notify this Board so that a hearing may be held and a detailed remedial order issued....” **ULP #20-86.**

“[M]eet with union representatives of Mike Mahan and attempt to determine the amount due him..., if a mutual determination cannot be made within ten (10) days, notify this Board so that a hearing may be held and a detailed remedial order issued....” **ULP #1-87.**

**74.345: Types of Orders – Restitution – Interest**

“I hereby grant 6 percent annual interest to be added to all awarded back pay, benefits and expenses.” **ULP #19-77**

“There is no question that the variable rate [Florida Steel Corp.] formula used by the hearing examiner and approved by the Board results in an effective interest rate exceeding ten percent... However, we are not convinced that the statute [Section **25-205(9-1), MCA**] prevents the use of variable rates when calculating interest due on back pay awards.... Taking into consideration the justification for awarding interest on any monetary judgment and the remedial purposes of the Montana Public Employees Collective Bargaining Act we conclude that the Florida Steel method for calculating interest is lawful.... The award of interest encourages more prompt compliance with Board orders and discourages the commission of unfair labor practices, thereby effectuating the legitimate ends of labor legislation... Thus, the statutory provision on interest must not supplant, but should complement, the legitimate ends of public policy.” **ULP #3-79 Montana Supreme Court (1984).** See also **ULP #3-79 District Court (1983).**

“[W]e have calculated interest by the formula adopted by the NLRB in **Florida Steel Corporation [231 NLRB No. 114, 96 LRRM 1070 (1977)]**. This formula requires that interest on back pay and other monetary remedies be computed utilizing the Internal Revenue Service ‘adjusted prime interest rate’ which is a sliding interest scale charged or paid by the IRS in underpayment or overpayment of Federal taxes.” **ULP #24-77.** See also **ULPs #30-50 and #34-82.**

In *Great Falls v. Young and Board of Personnel Appeals* (1984) “the [Montana Supreme] Court held the Florida Steel interest standard applicable to unfair labor cases under Montana law.” **ULP #24-77 District Court (1985)**

“The statute [that part of Section 25-9-205 related to statutory interest rates] does not prevent the use of variable interest rates when calculating interest due on back pay awards, but should complement the legitimate ends of public policy. *Great Falls [v. Young and Board of Personnel Appeals (1984)]* ... The

interest award will therefore not be disturbed.” **ULP #24-77 District Court (1985)**

See also **ULPs #28-76, #3-79, and #10-80.**

See **ULP #1-87.**

**74.35: Types of Orders – Punitive Damages**

“Because [the Hearing Examiner] lacks the authority to assess punitive damages, ... [she] cannot consider the Union’s request that she direct the District to pay the costs it [AFSCME] has incurred in this matter.” **ULP #5-80**

“Because the record lacks any signs of an anti-union attitude on the part of the defendants, an order requiring such things as a reimbursement to the Union of expenses associated with this charge, a quarterly calculation plus interest on wages and benefits the employees would have received, and posting of cease and desist notices would be inappropriate.” **ULP #42-81**

**74.351: Types of Orders – Punitive Damages – Fines and Penalties**

“The question of whether this Board has jurisdiction to grant the penalty aside, McCarvel is due no penalty since the 18 month period [related to the statutory penalty] has long since lapsed.” **ULP #24-77**

**74.352: Types of Orders – Punitive Damages – Attorney’s Fees**

“[T]his board has no authority to award attorney fees at the administrative level. In Thornton vs. The Commission of Labor and Industry, the Montana Supreme Court spoke to this specific issue.” **ULP #24-77**

“The Union shall not be reimbursed for legal or other expenses incurred as a result of bringing these charges.” **ULP #3-79**

“The Montana Supreme Court has long adhered to the rule that attorney’s fees may not be awarded to the successful party unless there is a contractual agreement or unless there is specific statutory authorization.... [U]nder these cases an award could not be made in the absence of specific statutory authorization. Moreover, even if this Board had the equity power of a District Court, the claims here are not of the type which would bring this case within Foy vs. Anderson, ... an equitable exception to the general rule.” **ULP #11-79**

“Mr. O’Connell has not referenced or argued the question of legal cost in his brief.... [T]he remedies provided the Board of Personnel Appeals do not include awarding legal costs.” **ULP #19-79**

**74.353: Types of Orders – Punitive Damages – Other**

The Hearing Examiner “would not adopt in this case the blanket pay order often used in the private sector but rather judging this case on its individual merits order the District to pay to the teachers, through the BEA [Billings Education Association], one day’s pay. Anything less would be a meaningless hand slap.. Anything more would not take into account the role of the BEA in creating many of the problems about which it now complains.” However, the Board of Personnel Appeals in its final order stated that “it is ... the interpretation of the U.S. Supreme Court that the language of section 10(c) does not give the NLRB punitive powers. We find that the same interpretation is applicable to our statute, 59-1607(2). We therefore reverse the Hearing Examiner’s award of one day’s pay to the Complainants as being outside the authority of this Board to make such an award on a punitive basis.” **ULP #17-75**

**74.36: Types of Orders – Notice to Employees**

See **ULPs #6-77, #11-78, and #20-78.**

**74.361: Types of Orders – Notice to Employees – Posting**

See **ULPs #5-73, #5-75, #16-75, #6-77, #1978, #23-78, #34-78, #3-79, #30-79, #10-80, #30-80, #34-80, #18-82, #29-84, and #34-84.**

See **ULPs #29-84, #19-85, #1-87, #27-87, #34-87, and #4-89.**

**74.362: Types of Orders – Notice to Employees – Mailing**

“While an order requiring the posting of notices may be more common, the National Labor Relations Board has, under identical discretionary language, required mailing of the notices to employees.... Given the unique facts of this case, including the egregious behavior of the Union in refusing to file the grievance for more than 17 months, we believe the Board’s remedial order requiring the Union to mail the notices is not an abuse of power.” **ULP #24-77 District Court (1985)**

“The bargaining unit involved here is a broad, multicraft unit represented by the Public Employees Craft Council.... Because this unfair labor practice involves only the Teamsters, it is difficult to see how mailing notice of the violation to all the members of the bargaining unit will effectuate the policies of the statute. But the choice of the Board will not be disturbed unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the statute.... No such showing has been made in this case.” **ULP #24-77 District Court (1985)**

See also **ULPs #6-77 and #24-77.**

“The District Court held the egregious behavior of the Union in refusing to file the grievance for 17 months justified the Board’s remedial order [to mail this notice to ‘all employees in the bargaining unit of the City of Great Falls’]. . . . The District Court did not abuse its discretion in this finding.” **ULP #24-77 Montana Supreme Court (1986).**

**74.372: Types of Orders – Interim Relief – Ability to Grant**

“Having taken under advisement the motion of the Complainant for any appropriate temporary relief, ... it is the opinion of the Hearing Examiner that the Board of Personnel Appeals or its duly appointed agent does not have the jurisdiction to entertain said motion. Therefore, it is ordered ... denied.” **ULP #4-73**

“The BEA [Billings Education Association] ... requests the Board of Personnel Appeals to seek a restraining order or other appropriate temporary relief in order to: (1) compel School District No. 2 ... to meet and bargain in good faith.... (2) restrain the defendant from issuing individual contracts which require the defendant to repudiate contracts already issued, and (3) restrain the defendant from any further individual bargaining.... The Board can only seek restraining order or other appropriate relief incident to the enforcement of those [final] orders [issued pursuant to unfair labor practice proceedings] ... In the instant case, the Board has not yet issued a final order..... We do not intend, by this order to address the Complainant’s order to seek injunctive or other equitable relief.” **ULP #17-75**

**74.39: Types of Orders – Bargaining Orders [See also 32.99.]**

“Immediately submit three names acceptable to the Employer for participation in the contractual grievance procedure, in order to resolve the grievance in question.” **ULP #13-74**

“I do order the City to forthwith begin negotiations with the Union with regard to the matter of wages.... Any time after this order might be adopted as the order of the Board of Personnel Appeals and if the City then fails to negotiate, as the Collective Bargaining Act requires, with the Union, I would then make a finding of bad faith on the part of the City.” **ULP #14-74**

“Convene the grievance committee ... within ten days of the date of this order, in order to resolve the grievance which relates to Kenneth Dyer’s discharge.... Notify the Board of Personnel Appeals, in writing, as to the grievance committee’s findings with regard to the grievance in question.” **ULP #2-75**

The School District was ordered to “authorize its negotiating team to conduct meaningful negotiations and arrive at tentative agreements” and to “meet with the Association and negotiate in good faith at all scheduled negotiation

sessions unless such sessions are cancelled by mutual agreement or, should a situation arise where attendance at such sessions is not possible, inform the members of the Association's negotiation team, as early as is possible after such a situation arises, of [their] inability to meet." **ULP #14-76**

"The Defendant(s) are ordered to proceed and participate in the arbitration as set forth in the labor contract between the Montana Public Employees Association and Cascade County Commissioners." **ULP #19-79**

"Immediately implement the arbitration proceedings necessary to process the grievances of Dorothy Tone and Connie Undem." **ULP #30-79**

"Hold an open hearing for Kathryn P. Kifer at which she be allowed to have full opportunity to call witnesses and have representatives speak on her behalf." **ULP #43-79**

"Within five days of the time this Recommended Order becomes the Final Order of the Board, agents of the District and the Union shall meet to select an arbitrator from the list provided by the Board of Personnel Appeals on December 10, 1979. In accordance with the coin flip of December 14, 1979, the Union shall strike the first name. The parties shall then participate in the arbitration process as specified in their collective bargaining agreement." **ULP #5-80**

"The School District shall proceed with the processing of Robert Jackson's grievance as provided in the 1978 collective bargaining agreement." **ULP #7-80**

"It is ... ordered that this Complaint be remanded to the grievance-arbitration procedure outlined in the collective bargaining agreement between the parties to this matter.... The respondent will ... file a written statement with this Board indicating that it is willing to arbitrate this issue and to waive the procedural defense that this grievance is not timely filed.... The parties will then process this grievance...." **ULP #43-81**

"The defendants shall immediately begin to process the grievance filed by Gale Wood pursuant to the grievance procedure contained in the collective bargaining agreement." **ULP #18-83**

See also **ULPs #2-73, #15-74, #16-74, #17-75, #20-75, #4-76, #6-76, #20-76, #24-77, #17-78, #20-78, #23-78, #30-78, #47-79, #29-80, and #16-81.**

The City of Great Falls must "(1) Negotiate an agreement with the MPEA to replace the unexecuted 1985-86 agreement. (2) Appoint a bargaining committee with the authority to bargain in good faith with the union. The City is to provide the bargaining team with written guidelines setting forth their authority and limits. Any amendments to these guidelines and limits must also



be in writing. (3) Until an agreement is reached with MPEA, provide the Board of Personnel Appeals with written notification of the date, time and duration of all bargaining sessions.” **ULP #19-85.**

“[I]mplement and abide by the decisions of Harlan Lund concerning the grievances of Harlan Becker and Floyd....” **ULP #20-86.**

“It is hereby recommended and this does order ... that the Board of Personnel Appeals be advised in writing that the grievance procedure is being implemented; ... that the Board of Personnel Appeals be advised in writing as the grievance proceeds through each step of the grievance procedure up to and including final resolution....” **ULP #27-87.**

“Within five (5) days of the time that this Recommended Order becomes the Final Order of the Board of Personnel Appeals, the Defendant shall contact the Complainant and establish the earliest possible date to submit the Arneson Grievance to Step III of the grievance procedure and subsequently, if necessary, to arbitration pursuant to the 1987-1989 Collective Bargaining Agreement between the Custer County Unified School District and Custer County Unified School District Custodians....” **ULP #4-89.**

“The Defendant shall cease and desist from failing to bargain in good faith with the Complainant consistent with findings and discussions contained herein....” **ULP #13-90.**

**74.40: Types of Orders – Submission to Impasse Proceedings [See also 51.5.]**

See **ULPs #13-74, #24-77, and #7-80.**

**74.41: Types of Orders – Rescinding Certification [See also 32.98.]**

“The election held in UD #8-81 is hereby vacated and the certification of AFSCME as the exclusive representative of certain members of the Gallatin County Sheriff’s Office is hereby revoked.... This order does not preclude the filing of another petition for unit determination and another election.” **ULP #3-82**